APR 7
CHARLES ELMORE

FILE COPY

No. 26

In the Supreme Court of the United States

OCTOBER TERM, 1930

THE UNITED STATES, PETITIONER

v.

KIRBY LUMBER COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

REPLY BRIEF FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1930

No. 759

THE UNITED STATES, PETITIONER

v.

KIRBY LUMBER COMPANY

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

REPLY BRIEF FOR THE UNITED STATES

On page 9 of the respondent's brief in opposition it is contended that the petition misstates a material fact and that it is misleading. Reference is made to the statement on page 2 of the petition that "the Lumber Company received cash at par for each bond." The respondent states that the bonds were not issued *for cash*, but for its own preferred stock and accrued dividends thereon. There is nothing in the record to sustain the respondent's allegation.

We submit that the statement above quoted from the petition is a fair interpretation of the special findings of fact of the Court of Claims.

The Court of Claims in its special findings speaks of the repurchase of the bonds "at less than the issuing *price*" (Finding 5, R. 12), and finds that:

> The bonds mentioned in Finding 4 above were issued at par, the Kirby Lumber Company receiving the par value of the bonds issued, without incurring expense incident to the issue of the said bonds. (Finding 7, R. 12.)

In the findings of fact and opinion of the Court of Claims there are frequent references to "the excess of the issuing *price* of the bonds" (R. 13, 15) over "the purchase *price*" (R. 12, 13). Clearly the court considered that the respondent received *cash* for the bonds.

Throughout the proceedings in the Court of Claims it was assumed by all parties that the bonds were issued at par *for cash*. The taxpayer never urged the contrary. It was stated by the Government's counsel during argument in the Court of Claims that the bonds were issued for cash. That statement was not challenged. We submit that the statement made in the Government's petition is accurate and that the criticism and characterization of this statement contained in respondent's brief is groundless.

Moreover, whether the respondent received cash for the bonds is immaterial, since in some form the

price received was "the par value of the bonds issued."

Respectfully submitted.

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